

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO.739 OF 2016

1. Poonam w/o Sandeep Ambildige, aged about 26 years, Occ. Household, R/o Buldhana at present residing at Akola.
2. Shantabai w/o Pundlik Sardar, aged about 47 years, Occ. Household.
3. Pundlik s/o Dalpat Sardar, aged about 55 years, Occ. Government Service, Applicant no. 2 and 3 resident of Akola. Tq. And Distt. Akola.
4. Daulat s/o Ninaji Sardar, Aged about 65 years, Occ. Retired, R/o Khamgaon, Tq. Khamgaon, Distt. Buldhana.

... APPLICANTS

VERSUS

1. State of Maharashtra, through Police Station Officer, Khamgaon (Rural), Police Station, Tq. Khamgaon, Distt. Buldhana.
2. Pradeep s/o Sahebrao Ambildige, aged about 38 years, Occ. Service, r/o Tayade Colony, Khamagaon, Distt. Buldhana.

... NON-APPLICANTS

Shri A.S. Mardikar, Senior Advocate with Shri S.G. Joshi, Advocate for the applicants.

Smt. M.N. Deshmukh, A.P.P. for non-applicant no.1.

Shri M.N. Ali, Advocate for non-applicant no.2.

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.

CLOSED FOR JUDGMENT ON : 14.02.2023.

JUDGMENT PRONOUNCED ON : 24.02.2023.

JUDGMENT : (Per : Vinay Joshi, J.)

Heard finally by consent of the learned Counsel appearing for the respective parties.

2. This is an application in terms of Section 482 of the Code of Criminal Procedure seeking to quash the First Information Report (FIR) in Crime No.185 of 2016 registered with Khamgaon Rural Police Station, District Buldhana for the offence punishable under Sections 306, 506 read with Section 34 of the Indian Penal Code. In pursuance of interim order dated 20.10.2016, the charge-sheet has not been filed.

3. Deceased Sahebrao Ambildige consumed poisonous substance on 17.07.2016 and died while under treatment on

27.07.2016. Since it was a suicidal death, initially AD was registered, however on the same day, i.e. on 27.07.2016, son of the deceased namely Pradip lodged the report against the applicants alleging that they have abetted deceased to commit suicide. On the basis of said report, the aforesaid crime came to be registered.

4. The facts and circumstances giving rise to this application are that the deceased Sahebrao aged near-about 65 years, had two sons namely Pradip and Sandip. Applicant no.1 Poonam is the wife of Sandip whilst applicant nos. 2 and 3 are parents of applicant no.1. applicant no. 4 is the uncle of applicant Poonam. It has been alleged that applicant no.1 Poonam along with her relatives have abetted deceased to commit suicide, and thus, they are responsible for his death.

5. Poonam got married with Sandip on 12.04.2015 and since marriage, both started to reside separately at Buldhana. Deceased Sahebrao along with his wife and another son were permanently staying at Khamgaon. After few initial days, there was matrimonial hassle in between Poonam and Sandip. Poonam disliked the rural atmosphere and was insisting Sandip for lavish lifestyle. On an often she used to quarrel with Sandip on variety of reasons.

Sandip used to inform his father Sahebrao (deceased) about the ill behavior of Poonam. As and when Poonam visited to Khamgaon deceased Sahebrao gave her peace of advise. Parents of Poonam were instigating her to quarrel with her husband and also telephonically threatening deceased for treating Poonam well. The deceased got rid of matrimonial dispute of his son. On 28.10.2015, father and uncle of Poonam came to the house of the deceased and quarreled for behaving properly with Poonam. On 05.07.2016 also they came to Khamgaon and threatened deceased for lodging of a police report. Sahebrao got frustrated by such unruly behavior on the part of Poonam and her parents, which resulted into consuming poison on 17.07.2016 and consequential death of Sahebrao on 27.07.2016.

6. Deceased Sahebrao was in habit of writing diary expressing his feelings and mind. The diary containing 1 to 33 pages has been seized. It bears noting of some intermittent dates from 25.10.2015 to 05.07.2016. Deceased Sahebrao in his noting dated 29.10.2015 expressed his state of mind that he intend to commit suicide. Again on 05.07.2016, he similarly stated the happenings and his intention to commit suicide. In said noting, he has specifically

stated that he is committing suicide for which Poonam, her parents and uncle are solely responsible.

7. Learned Senior Counsel Shri Mardikar appearing for the applicants would submit that the facts and circumstances do not constitute the offence against the applicants as far as Section 306 of the Indian Penal Code is concerned. It is submitted that the First Information Report even if taken on its face value, and accepted in entirety, would not constitute the offence of abetment to commit suicide. It is argued that in order to constitute the abetment, the prosecution has to establish adequate *mens rea* on the part of the accused. The FIR coupled with several diary entries, no where discloses that the applicants have created such atmosphere and the harassment was of such magnitude that it would drive the deceased to commit suicide.

8. It is argued that deceased was staying at Khamgaon whilst Poonam and her parents were residing separately at Buldhana. It is submitted that the material adduced no where indicates that on either point of time Poonam quarreled with the deceased or threatened him. Isolated instance of parents of Poonam cannot be construed as sufficient abetment to deceased to commit

suicide. Moreover, it is submitted that though the deceased noted in diary on 05.07.2016 about his intention to commit suicide, however after 12 days, he consumed poison. Therefore, there is no direct link between the noting dated 05.07.2016, with the related act of consuming poison.

9. *Per contra*, learned A.P.P. appearing for the non-applicant/ State resisted this application by contending that since inception, Poonam was not behaving properly with Sandip as well as his family members. Time to time the parents of Poonam instigated her to quarrel with Sandip. The deceased got frustrated by the act of Poonam as well as the threats given by her parents. There was continuous harassment to the deceased, which amounts to sufficient instigation.

10. Learned Counsel Shri Ali appearing for the non-applicant no.2 additionally submitted that, diary entries are sufficient to establish continuous harassment and the behavior of the applicants was of such a nature that it made his life miserable making him to think that suicide is the only option. He would submit that diary entry dated 29.10.2015 also indicates that the deceased has expressed his desire to commit suicide due to matrimonial dispute of

his son with Poonam but he did not. The another diary entry dated 05.07.2016 is specific enough to state that time and again, parents of Poonam harassed and threatened him, therefore, he desired to commit suicide by specifically blaming the applicants. Finally, he would submit that it is a matter of trial to establish the sufficient abetment and therefore, the case for quashing has not been made out.

11. Undisputedly, Poonam and Sandip were residing separately at Buldhana from their marriage. Neither FIR nor diary entries disclose that Poonam has quarrelled with the deceased or gave threats. We have carefully examined various diary entries, which show that due to domestic quarrel between Poonam and her husband, deceased was frustrated. Always onus lies on the prosecution to show the circumstances, which compelled to the deceased to take extreme step to bring an end to his life. The prosecution is only relying on the various diary entries wherein twice deceased noted about his intention to commit suicide. In true sense, the entries cannot be termed as suicide note since after 12 days from the last diary noting, deceased consumed poison.

12. Learned Counsel Shri Ali for the non-applicant no.2

would submit that the cruel act of Poonam and repeated threats given by her parents amount to sufficient instigation to deceased to end his life. They created such circumstances and situation, which provoked the deceased to commit suicide. By placing reliance on the decision of the Supreme Court in case of *Praveen Pradhan vs. State of Uttranchal and anr. 2012 ALL MR (Cri.) 4124 (S.C.)*, he would submit that from variety of factors one has to gather whether there is sufficient instigation on the part of the applicants. In said case, the High Court has dismissed the application for quashing of the FIR which was affirmed by the Supreme Court. On facts it was held that the harassment meted was not a casual affair but it was persistent one. Note was taken that the then deceased was qualified graduate engineer and subjected to persistent harassment, humiliation and illegal demand by his superior. Considering those peculiar facts, the Supreme Court has declined to interfere. In said case itself the Supreme Court took review of several earlier decisions in the field and opined (paragraph 15) that the instigation has to be gathered from the circumstances of a particular case. No straight-jacket formula can be laid down to find out as to whether in a particular case, there has been instigation which forced the person to commit suicide.

13. Largely, it depends upon the facts and circumstances, whether it constitute a sufficient instigation to deceased to commit suicide. Reasonable certainty and consequence of the acts of the applicants must be spelt out. The cruelty and harassment must be of such a magnitude, that it would in all likelihood, drive the deceased to commit suicide.

14. *Per contra*, learned Senior Counsel Shri Mardikar relied on the decision of this Court in case of ***Dilip s/o Ramrao Shirasao and ors. vs. State of Maharashtra and anr. 2016 ALL MR (Cri) 4328.*** Likewise reliance has been placed on the decision of the Supreme Court in cases of ***Sanju alias Sanjay Singh Sengar vs. State of M.P 2002 CRI.L.J. 2796, Madan Mohan Singh vs. State of Gujarat and anr. (2010) 8 SCC 628, S.S. Chheena vs. Vijay Kumar Mahajan and anr. 2010 ALL MR (Cri) 3298 (S.C.), Chitresh Kumar Chopra vs. State (Government of NCT of Delhi) (2009) 16 SCC 605, State of Kerala and ors. vs. Unnikrishnan Nair and ors. AIR 2015 SC 3351 and Gurcharan Singh vs. State of Punjab (2017) 1 SCC 433.*** In above decisions by and large it has been observed that to constitute abetment, intention and involvement of accused to aid or instigate the deceased to commit suicide is an imperative factor. To constitute

abetment, the accused by their acts or conduct must create such a circumstances that the deceased was left with no other option. Moreover, clear *mens rea* and active act to abet must be establish.

15. It is an unusual case wherein a daughter-in-law has been alleged to abet her father-in-law to commit suicide. The unfolded fact discloses that neither Poonam nor her parents stayed at Khamgaon with the deceased at any point of time. The personal diary of the deceased bears a reference at several places that Poonam was of quarrelsome nature and there used to be frequent quarrels in between the couple. Diary noting gives impression that the deceased was sensitive man who got frustrated by the matrimonial hassle in the life of his son Sandip. The diary entry discloses that most of the time Sandip has informed to the deceased about the behavior of his wife Poonam that is why the deceased was worried. The first reference came in the diary noting dated 29.10.2015, where the deceased expressed that Poonam used to harass her husband because of which he is more worried. He also thought of committing suicide. He also stated in the same flow that, his younger daughter Priyanka remained unmarried and for that reason also, he is sad. Though on 29.10.2015, he expressed his desire to commit suicide but for next

six months he did not.

16. Pertinent to note that due to multiple worries i.e. domestic quarrel in the life of his son and about marriage of his daughter, he was worried and frustrated. Diary noting dated 05.07.2016 indicates that on that day, father and uncle of Poonam met, quarreled and threatened to lodge the police complaint. He stated that due to such affair, he is committing suicide and the applicants are responsible. Pertinent to note that though such noting was taken on 05.07.2016, however he consumed poison after 12 days i.e. on 17.07.2016.

17. It is evident that the deceased an old retired man was of sensitive nature and got frustrated due to quarrel in between his son and daughter in law. Matrimonial discord and differences is day to day affair in the life of most of the couples. Particularly, the couple was staying away from the deceased and therefore, it cannot be said that they had instigated the deceased to commit suicide. Rather by looking to the tough matrimonial life of his son, the deceased was disturbed. Moreover, his daughter was unmarried, which added the misery. Though the diary bears a reference that father and uncle of Poonam quarreled and threatened him to treat Poonam properly,

however from said act it cannot be construed that they had intention to abet the deceased to end his life. Always, it is difficult to establish the offence punishable under Section 306 of the Indian Penal Code. Undoubtedly, on the basis of facts and circumstances, inference is to be drawn. However the facts as spelt about falls short to make out a case against the applicants holding them responsible for sufficiently instigating the deceased to commit suicide.

18. In that view of the matter, we are of the view that continuation of such prosecution would result into abuse of the process of Court. As such we allow the application and hereby quashed and set aside the FIR in Crime No.185 of 2016 registered with Khamgaon Rural Police Station, District Buldhana for the offence punishable under Sections 306, 506 read with Section 34 of the Indian Penal Code.

19. The application stands disposed of accordingly. No order as to costs.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)